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ACCOUNT NO. 23-0975

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of : **Confirmation No. 4407**
Seiji KAWASAKI et al. : **Docket No. 2003_1470A**
Serial No. 10/684,407 : **Group Art Unit 3636**
Filed October 15, 2003 : **Examiner S. Vu**
SEAT STRUCTURE : **Mail Stop: APPEAL BRIEF - PATENTS**

PATENT OFFICE FEE TRANSMITTAL FORM

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Attached hereto is a check in the amount of \$250.00 to cover Patent Office fees relating to filing the following attached papers:

Appeal Brief \$250.00

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Respectfully submitted,

Seiji KAWASAKI et al.

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APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the final rejection of claims 1, 2 and 5-10.

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I. REAL PARTY IN INTEREST:

The real party in interest is the assignee, Delta Tooling Co., Ltd. of Hiroshima, Japan.

II. RELATED APPEALS AND INTERFERENCES:

There are no related appeals and interferences.

III. STATUS OF CLAIMS:

Claims 1, 2, and 5-10 are currently pending in the present application, and all of the pending claims 1, 2, and 5-10 stand rejected and are being appealed.

Claims 3 and 4 were canceled by an Amendment filed December 30, 2004.

IV. STATUS OF AMENDMENTS:

No amendments have been filed subsequent to final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER:

With exemplary reference to the drawing figures, the sole independent claim, claim 1, is directed to a seat structure comprising: a seat frame 4, 6 (specification page 3, line 25 - page 4, line 5); a three-dimensional net 10 stretched over the seat frame 4, 6 (specification page 4, lines 6 and 7); a skin material 12 covering a part of the three-dimensional net 10 (specification page 4, lines 6-10); and a fastener 24 for selectively releasably connecting a portion of the skin material 12 and the three-dimensional net 10 so as to connect the portion of the skin material 12 to the three-dimensional net 10 while the skin material 12 is covering said part of the three-dimensional net 10, and so as to disconnect the portion of the skin material 12 from the three-dimensional net 10 while the skin material 12 is covering said part of the three-dimensional net 10, surface rigidity of the skin material 12 being higher when the fastener 24 connects the portion of the skin material 12 to the three-dimensional net 10 than when the fastener 24 does not connect the portion of the skin material 12 to the three-dimensional net 10 (specification page 5, line 7 - page 6, line 2 and page 6, lines 8-12).

Thus, according to the present invention as recited in claim 1, the skin material 12 cover a part of the three-dimensional net 10, as illustrated in Figs. 1, 3A and 3B, and the fastener 24 provides for selectively releasably connecting the skin material 12 to the three-dimensional net 10. Specifically, according to claim 1, the fastener 24 is selectively releasably connecting the skin material and the three-dimensional net so as to connect the skin material 12 to the three-dimensional net 10 while the skin material 12 is covering the three-dimensional net 10 (as shown in Fig. 3A), and so as to disconnect the skin material 12 from the three-dimensional net 10 while the skin material 12 is covering the three-dimensional net 10 (as shown in Fig. 3B). It is further specified in claim 1 that surface rigidity of the skin material 12 is higher when the fastener 24 connects the skin material 12 to the three-dimensional net 10 (as shown in Fig. 3A) than when the fastener 24 does not connect the skin material 12 to the three-dimensional net 10 (as shown in Fig. 3B).

Thus, in both situations where the fastener 24 connects the skin material 12 to the three-dimensional net 10, and when the fastener 24 does not connect the skin material 12 to the three-dimensional net 10, the skin material 12 remains in a covering relation to the three-dimensional net 10 (as shown in Figs. 1, 3A and 3B). The fastener 24 is not used for the purpose of removing the skin material 12 from a covering relation with the three-dimensional net 10, but is rather used to connect a portion of the skin material 12 to the three-dimensional net 10 which is covered by the skin material 12 (as shown in Fig. 3A) or to disconnect the skin material 12 from the three-dimensional net 12 while the skin material 12 remains covering the three-dimensional net 10 (as shown in Fig. 3B), as recited in claim 1.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

A. Claims 1 and 8-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art illustrated in present Fig. 5 (hereinafter "the admitted prior art") in view of U.S. Patent 4,047,756 (hereinafter "Ney").

B. Claims 2 and 5-7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art and Ney, as applied to claim 1 above, and further in view of U.S. Patent 3,220,767 (hereinafter "Hendrickson").

VII. ARGUMENT:

A - Rejection under 35 U.S.C. 103(a) over the admitted prior art (present Fig. 5) in view of Ney (U.S. 4,047,756).

CLAIMS 1 AND 8-10

Independent claim 1 requires that a three dimensional net 10 is stretched over the seat frame 4, 6, and that a skin material 12 covers a part of the three dimensional net. This feature is shown in the "admitted prior art" of present Fig. 5. In particular, the admitted prior art shows a three dimensional 52 stretched over the seat frame 50, and a skin material 54 covering a part of the three dimensional net 52.

Claim 1 further requires a selectively releasably fastener 24. The Examiner cited the Ney patent (U.S. 4,047,756) for teaching a selectively releasably fastener 16 for interconnecting portions 15, 17 of a seat skin material (referred to in the Ney patent as a "covering sheet" material).

However, claim 1 does not simply require the presence of a selectively releasably fastener 24. Rather, claim 1 specifically requires

"a fastener for selectively releasably connecting a portion of the skin material [12] and the three-dimensional net [10] so as to connect said portion of said skin material [12] to said three-dimensional net [10] while said skin material [12] is covering said part of the three-dimensional net [10], and so as to disconnect said portion of said skin material [12] from said three-dimensional net [10] while said skin material [12] is covering said part of said three-dimensional net [10], surface rigidity of said skin material [12] being higher when said fastener [24] connects said portion of said skin material [12] to said three-dimensional net [10] than when said fastener [24] does not connect said portion of said skin material [12] to said three-dimensional net [10]."

As described in the "Background of the Invention" section of the present specification, the admitted prior art of Fig. 5 has the skin material 54 sewn to a portion of the three-

dimensional net 52, such that the portion of the seat covered by the skin material 54 is high in surface rigidity. Because the skin material 54 is sewn to the three-dimensional net 52, the structure does not allow the seat occupant to select between "a riding feeling of being high in rigidity or a riding feeling in which the seat occupant fits well with the seat." (See specification, page 2, lines 1-11).

As described in the "Summary of the Invention" section of the present specification, to cure this deficiency that was recognized by the present inventors, the present inventors developed the present invention which, instead of having the skin material sewn to the three-dimensional net as in the admitted prior art, has a fastener releasably connecting the skin material to the three-dimensional net so that the "riding feeling" can be adjusted by adjusting the surface rigidity of the skin material by connecting or disconnecting the skin material from the three-dimensional net while the skin material is covering the portion of the three-dimensional net.

The Ney patent, on the other hand, teaches only the concept of releasably connecting one section of a skin material to another section of the skin material to allow for assembly and removal of the skin material over the seat frame. This is accomplished according to the Ney patent with the use of releasable fasteners (zippers 16). The Ney patent clearly does not teach releasable connection of a skin material to a three-dimensional net which underlies the skin material (i.e., "while said skin material is covering said part of said three-dimensional net" as claimed in claim 1).

Accordingly, the very feature of the present invention (a fastener releasably connecting the skin material to a part of the three-dimensional net) that is necessary to obtain the object of the present invention (to enable adjustment of the rigidity of the seat skin material to provide a more customized "riding feel") is the feature which is both lacking from the admitted prior art (Fig. 5) and also lacking from the Ney patent.

In other words, neither the admitted prior art nor the Ney patent provides a teaching of a fastener that releasably connects a portion of the skin material and the three-dimensional net so

as to connect and disconnect that portion of the skin material from the three-dimensional net, while the skin material is covering the three-dimensional net.

The Ney patent discloses the interconnection (using fastener 16) of one portion 15 of a seat skin material to another portion 17 of a seat skin material. Thus, if Ney can be said to have taught any modification of the admitted prior art, such modification would be to releasably interconnect the two separate portions of the skin material 54 shown in Fig. 5 (the planar portion 54 shown to the left in Fig. 5, and the curved portion 54 shown to the right in Fig. 5). Such interconnection of the two separate portions of the skin material 54 using a fastener such as the zipper 16 of Ney in the admitted prior art of Fig. 5 would be quite similar to the use of the fastener in Ney and could be put to the same purpose as in Ney (i.e. to enable ready assembly and removal of the seat skin material).

The only suggestion to use the zipper 16 of Ney to connect one of the portions 54 of the skin material to the three-dimensional net 52 which underlies the skin material 54 comes from Applicants' own disclosure. It is thus apparent that, to reach the conclusion of unpatentability due to obviousness, the Examiner has impermissibly relied upon Applicants' disclosure as a blueprint to reconstruct the claimed invention. This is clearly contrary to federal circuit law see in re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). ("Combining prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight. See, e.g. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985) ("the invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.")).

As such, it is respectfully submitted that a person having ordinary skill in the art would clearly not have been motivated to modify the admitted prior art of Fig. 5 in view of the Ney patent in such a manner as to result in or otherwise render obvious the present invention of claim 1. Therefore, it is respectfully submitted that present claim 1 is clearly allowable, and it is respectfully requested that the rejection of claims 1 and 8-10 be reversed.

B - Rejection under 35 U.S.C. 103(a) over the admitted prior art and Ney (U.S. 4,047,756) as applied to claim 1, and further in view of Hendrickson (U.S. 3,220,767).

CLAIMS 2 AND 5-7

In addition to the limitations of claim 1 as discussed above, claim 2 requires that the seat structure further includes a cushioning material (see element 26 in Figs. 4A and 4B) inserted between the three-dimensional net 10 and the skin material 12 to reduce a vibration transmissibility.

Apparently recognizing that the admitted prior art of Fig. 5 and the Ney patent fail to disclose a cushioning material such as required by claim 2, the Examiner cited the Hendrickson patent (U.S. 3,220,767) for teaching "a chair comprising the use of cushioning material (40) for use inside the seat cover (16), in order to provide a friction or resistance element to prevent sliding of the cushion of the seat." The Examiner then took the position that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ Hendrickson's cushioning material (40) between the three-dimensional net and the skin material of the admitted prior art's invention, in order to provide a friction or resistance element to prevent sliding of the person's back on the seat frame."

However, with reference to the "Background of the Invention" section of the present specification, it is noted that the admitted prior art of Fig. 5 is described as utilizing "a lightweight net of a three-dimensional structure that is provided with desired characteristics (spring characteristics, damping characteristics and the like) sufficient for a cushioning material", in order to provide "a variety of lightweight, inexpensive and thin seats" (see page 1, lines 16-20). Therefore, it is submitted that the cushioning characteristics are already provided in the admitted prior art of Fig. 5 by the provision of the three-dimensional net, and further, that the use the three-dimensional net 52 of the admitted prior art to provide the desired cushioning characteristics enables the seat to be "lightweight, inexpensive and thin". Therefore, it is submitted that the description of the admitted prior art of Fig. 5 actually teaches away from

providing a cushion material between the three-dimensional net 52 and the skin material 54, since the three-dimensional net itself provides the desired cushioning material characteristics, and also results in a lightweight, inexpensive and thin seat. This "teaching away" from the claimed feature of claim 2 would have in fact lead a person of ordinary skill in the art away from making the modification suggested by the Examiner. See Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986) (a reference should be considered as a whole, and portions arguing against or teaching away from the claimed invention must be considered).

Furthermore, the Examiner stated in the prior art rejection of claims 2 and 5-7 that the motivation for employing Hendrickson's cushioning material (40) between the three-dimensional net and the skin material of the admitted prior art of Fig. 5 was "to provide a friction or resistance element to prevent sliding of the person's back on the seat frame." However, the admitted prior art of Fig. 5 is in no need of a modification to prevent slipping, since the skin material 54 is secured to the three-dimensional net 52. The arrangement in Hendrickson is a separate cushion being laid upon a hard seat of a chair, and such cushion could be easily slid without the provision of some means to secure it in place. This arrangement of the Hendrickson patent is quite different from the arrangement of the admitted prior art wherein the skin material 54 is secured to the three-dimensional net 52.

Therefore, for the above reasons, it is respectfully submitted that the admitted prior art of Fig. 5 fails to disclose or suggest the provision of a cushion between the skin material 54 and the three-dimensional net 52, and additionally fails to disclose or suggest a need for such cushion and, in fact, teaches away from the provision of such cushion. Furthermore, the Hendrickson patent, although teaching the provision of a separate cushion 40 on a hard chair, clearly fails to suggest the provision of such a cushion between the three-dimensional net 52 and the skin material 54 of the admitted prior art. Accordingly, a person having ordinary skill in the art would clearly not have been motivated to modify the admitted prior art to utilize the cushioning material

40 of Hendrickson between the skin material 54 and three-dimensional net 52 of the admitted prior art.

Furthermore, the Hendrickson patent provides no teaching or suggestion that would have obviated the above-discussed shortcomings of the admitted prior art and the Ney patent.

Accordingly, it is respectfully submitted that claim 2 is clearly patentable for the reasons presented above in support of claim 1, as well as for the additional reasons presented in the present subsection. Therefore, it is respectfully requested that the rejection of claims 2 and 5-7 be reversed.

VIII. CLAIMS APPENDIX

1. A seat structure comprising:
 - a seat frame;
 - a three-dimensional net stretched over the seat frame;
 - a skin material covering a part of the three-dimensional net; and
 - a fastener for selectively releasably connecting a portion of the skin material and the three-dimensional net so as to connect said portion of said skin material to said three-dimensional net while said skin material is covering said part of said three-dimensional net, and so as to disconnect said portion of said skin material from said three-dimensional net while said skin material is covering said part of said three-dimensional net, surface rigidity of said skin material being higher when said fastener connects said portion of said skin material to said three-dimensional net than when said fastener does not connect said portion of said skin material to said three-dimensional net.
2. The seat structure according to claim 1, further comprising a cushioning material inserted between the three-dimensional net and the skin material to reduce a vibration transmissibility.
5. The seat structure according to claim 2, wherein said portion of said skin material releasably connected to said three-dimensional net by said fastener comprises at least one side edge portion of said skin material.
6. The seat structure according to claim 2, wherein said portion of said skin material releasably connected to said three-dimensional net by said fastener comprises opposite side edge portions of said skin material.
7. The seat structure according to claim 2, wherein said part of said three-dimensional net covered by said skin material is a part against which a back of a seat occupant presses.

8. The seat structure according to claim 1, wherein said portion of said skin material releasably connected to said three-dimensional net by said fastener comprises at least one side edge portion of said skin material.
9. The seat structure according to claim 1, wherein said portion of said skin material releasably connected to said three-dimensional net by said fastener comprises opposite side edge portions of said skin material.
10. The seat structure according to claim 1, wherein said part of said three-dimensional net covered by said skin material is a part against which a back of a seat occupant presses.

IX. EVIDENCE APPENDIX

NONE

X. RELATED PROCEEDINGS APPENDIX

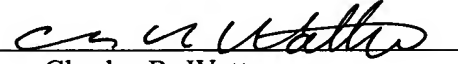
NONE

XI. CONCLUSION:

For the reasons set forth above, it is submitted that the Examiner's decision to finally reject claims 1, 2 and 5-10 should be reversed.

Respectfully submitted,

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